

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2015-077-00927R

Parcel No. 090/00227-000-000

Marvin Van Dusseldorp,

Appellant,

vs.

Polk County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on June 30, 2016. Marvin Van Dusseldorp was self-represented. Assistant Polk County Attorney Mark Taylor represented the Board of Review.

Van Dusseldorp is the owner of a residential, one-story home located at 651 61st Street, Des Moines. It was built in 1950 and has 994 square feet of above-grade finish; a full basement with 406 square-feet of low-quality finish; an open porch; a patio, and a 2 car-attached garage. The site is 0.273 acres. The property's January 1, 2015, assessment was \$128,700, allocated as \$29,000 in land value and \$99,700 in improvement value. Van Dusseldorp's protest to the Board of Review claimed the property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b). Van Dusseldorp also wrote in the area of the petition reserved for an equity claim and an error claim; however, the comments reiterated his claim of over assessment.

The Board of Review denied the petition. Van Dusseldorp then appealed to PAAB.

Findings of Fact

Van Dusseldorp purchased the subject property in 1993. He asserts the property never flooded prior to his purchase and submitted the Seller's Property Disclosure form with this petition to substantiate this claim. (Petition, Enclosure 1). He notes the prior owners indicated approximately six feet of the northeast corner of the subject site was located in a flood zone, but that no ground water leakage had ever been observed in the basement, even during the 1993 Flood. (Petition, Enclosure 1).

Because of the 1993 Flood, the City of Des Moines installed a levee system, which is located just west of the subject property. Van Dusseldorp asserts that since the levee was installed, his property has flooded including in 1998 and 2010. He submitted photographs of the flood and resulting damage. (Petition, Enclosure 2 & 8).

Van Dusseldorp also submitted articles from the Des Moines Register highlighting concerns with the levee and its effect on properties in his neighborhood. (Petition, Enclosures 7, 10 & 12). However, he also stated in his petition that the gates for the levee system were never lowered, bringing into question whether the levee system is the cause of any flooding that has occurred.

Ultimately, Van Dusseldorp did not submit any evidence of the fair market value of his property, such as an appraisal, comparable sales adjusted for differences, or a cost analysis, which is necessary to support a fair market value claim.

Amy Rasmussen, Director of Litigation with the Polk County Assessor's Office, testified for the Board of Review. The Board relied on five comparable sales, adjusted for differences, in its decision to deny Van Dusseldorp's claim. (Ex. C). The following chart summarizes the sales.

Address	Sale Price	Sale Date	Gross Living Area (GLA)	Adjusted SP
Subject	N/A	N/A	994	N/A
6132 Pleasant Dr	\$145,900	Oct-13	1028	\$144,400
6131 Harwood Dr	\$134,500	Apr-14	1028	\$143,900
961 Cummins Pkwy	\$142,400	Aug-14	1161	\$146,100
1045 Cummins Pkwy	\$124,900	Oct-14	975	\$149,400
5820 Pleasant Dr	\$165,000	Jun-14	1020	\$172,100

Van Dusseldorp was critical of the Board's sales, asserting they were not similar, are situated on higher elevations, and are not located in an area prone to flooding like his property is. He did not submit any evidence of better comparable properties, or evidence that would suggest these properties require additional adjustments for location.

Rasmussen testified that the Federal Emergency Management Agency (FEMA) flood map indicates the subject property is not located *within* a flood zone, but rather it is located near a floodway. (Ex. E). She also explained that the subject's site value and improvement value has a -8% economic obsolescence applied to reflect its proximity near a flood plain. Based on procedures within the Assessor's Office, a typical adjustment for location in (or near) a flood plain is 5%. (Ex. F). However, the appraiser can modify this adjustment and she notes the subject property did receive a higher adjustment than typical.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Van Dusseldorp asserts a levee built in the mid-1990s causes his property to flood. In his opinion, the location of his property near a flood plain and affected by the levee system reduces the value. However, he did not submit any evidence of market value, such as a cost analysis or an appraisal, to demonstrate the property's assessment exceeds its market value.

Order

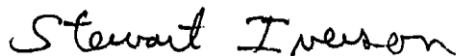
IT IS THEREFORE ORDERED that the Polk County Board of Review's action is affirmed.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

Dated this day 20th day of July, 2016.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair

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